No. A19-1944

State of Minnesota in Court of Appeals

N.H.,

Respondent,

and

REBECCA LUCERO, Commissioner of the Minnesota Department of Human Rights,

Plaintiff-Intervenor/Respondent,

v.

ANOKA-HENNEPIN SCHOOL DISTRICT NO. 11,

Appellant.

AMICI CURIAE BRIEF OF WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH, JUSTUS HEALTH and FAMILY TREE OF ST. PAUL IN SUPPORT OF RESPONDENT

CASSANDRA JACOBSEN (#0400120)
COZEN O'CONNOR
33 South Sixth Street, Suite 3800
Minneapolis, MN 55402
Telephone: (612) 260-9079

MARLA BENEDEK
COZEN O'CONNOR
1201 North Market Street
Suite 1001
Wilmington, DE 19801
Telephone: (302) 295-2024

AMANDA L. NELSON
(admitted *pro hac vice)*
COZEN O'CONNOR
45 West Broadway, 16th Floor
New York, NY 10006
Telephone: (212) 509-9400

DAVID P. BROWN
TRANSGENDER LEGAL DEFENSE & EDUCATION FUND, INC.
520 8th Avenue, Suite 2204
New York, NY 10018
Telephone: (646) 862-9396

Counsel for Amici Curiae WPATH, Family Tree and JustUs Health

(SEE ADDITIONAL COUNSEL ON INSIDE COVER)

COUNSEL PRESS · (866) 703-9373 PRINTED ON RECYCLED PAPER

TIMOTHY P. GRIFFIN
ANDREW D. DAVIS
STINSON LLP
50 South Sixth Street
Suite 2600
Minneapolis, MN 55402
Telephone: (612) 335-1500

CHRISTY L. HALL
ASHLYNN KENDZIO
GENDER JUSTICE
200 University Avenue West
Suite 200
St. Paul, MN 55013
(651) 7892090

TERESA J. NELSON
DAVID P. MCKINNEY
AMERICAN CIVIL
LIBERTIES UNION OF
MINNESOTA
2828 University Avenue
Southeast, Suite 160
Minneapolis, MN 55404
(651) 645-4097

Counsel for Respondent N.H.

JEANETTE M. BASIZ
KEATHERINE M. SWENSON
AMRAN A. FARAH
GREENE ESPEL PLLP
222 South Ninth Street
Suite 2200
Minnesota, MN 55402
(612) 373-0830

Counsel for Appellant
Anoka-Hennepin School District No. 11

RACHEL BELL-MUNGER
KEITH ELLISON
ATTORNEY GENERAL
STATE OF MINNESOTA
Assistant Attorney General
445 Minnesota Street, Suite 900
St. Paul, MN 55101-2127
(651) 757-1272

Counsel for Intervenor
Rebecca Lucero, Commissioner of the
Minnesota Department of Human Rights

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This amicus brief is respectfully submitted on behalf of amici curiae the World Professional Association for Transgender Health ("WPATH"), Family Tree Clinic of St. Paul ("Family Tree"), and JustUs Health.[1] Amici curiae respectfully submit this brief to inform the court regarding the healthy development of transgender adolescents; how integrating transgender students into their schools in a manner consistent with their gender identities promotes their development and well-being; and how segregationist policies such as Appellant's impede transgender adolescents' healthy development.

INTEREST OF AMICI CURIAE

WPATH is a nonprofit educational professional organization comprised of over 1,500 physicians and mental health care providers committed to promoting evidence-based care, education, research, advocacy, public policy, and respect in transgender health. In accord with its mission, WPATH has created the internationally recognized Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (the "Standards of Care"), which are recognized as the authoritative standard for the provision of transgender healthcare.[2] Through the Standards of Care, WPATH endeavors to provide clinical guidance for health professionals to assist transsexual, transgender, and gender-nonconforming people with safe and effective pathways to achieving lasting personal

[1] In accordance with Minn. R. Civ. App. P. 129.03, no counsel for any party to this action has authored this brief, in whole or in part, and no person other than the amici curiae noted have made any monetary contribution to the preparation or submission of this brief.

[2] Eli Coleman et al., World Prof'l Ass'n for Transgender Health ("WPATH"), Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People (7th ed. 2012), *available at* https://www.wpath.org/publications/soc (last visited Mar. 8, 2020).

comfort with their gendered selves, in order to maximize their overall health, psychological well-being, and self-fulfillment. Beyond analyzing and providing recommendations as to good clinical care, WPATH also educates clinicians and advocates for public policies and legal reforms that promote tolerance and equity for gender and sexual diversity and that eliminate prejudice, discrimination, and stigma in support of positive health outcomes.

JustUs Health is a Minnesota nonprofit organization that advocates for public policy and legislation protecting the health and well-being of LGBTQ individuals, and conducts community-based participatory research and focus groups to develop reports, educational materials, and programs to improve the health of LGBTQ Minnesotans. It was formed in 2018 by the merging of the Minnesota AIDS Project, the Rainbow Health Initiative, and Training to Serve. JustUs Health is a leader in advocating for transgender individuals' health coverage in public and private insurance plans. JustUs Health also engages in transgender-focused outreach related to HIV prevention, testing, and connection to care.

Family Tree is a not-for-profit care clinic based in St. Paul that focuses on providing reproductive and sexual healthcare and health education to LGBTQ communities. The clinic also provides LGBTQ individuals with primary and mental healthcare and access to legal services. In addition, Family Tree provides health education outreach services in schools and community settings as well as legislative advocacy for sexual healthcare and healthcare reform. Family Tree is a leading provider of gender-affirming healthcare for transgender patients in Minnesota, including offering thousands of hormone care visits to transgender patients every year.

FACTS

Amici Curiae respectfully incorporate the factual recitations in the parties' briefs and in the decision and order of the Honorable Jenny Walker Jasper of the Anoka County District Court, filed August 5, 2019.

ARGUMENT

A. Tens of thousands of Minnesotans are transgender.

"Transgender" is a term that refers to a broad spectrum of individuals whose gender identity differs from their sex assigned at birth.[3] *See* Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders ("DSM-5") (5th ed. 2013). "Cisgender" is a term that refers to individuals whose gender identity aligns with their sex assigned at birth. Gender identity is an individual's "deeply felt, inherent sense of being a girl, woman, or female; a boy, a man, or male; a blend of male or female; or an alternative gender."[4]

Gender identity is typically established in early childhood – between three and seven years of age – but individuals may also not become fully aware that their gender identities do not align with their assigned sexes until they reach adolescence or adulthood.[5] While

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[3] Individuals are typically assigned a sex at birth – male or female – based on an assessment of the individual's external genitalia. The assigned sex is then recorded on the individual's birth certificate.

[4] Am. Psychological Ass'n, Guidelines for Psychological Practice with Transgender and Gender Nonconforming People, 70 Am. Psychologist 832, 834 (2015) (hereinafter "APA Guidelines"), available at https://www.apa.org/practice/guidelines/transgender.pdf; *see also Boyden v. Conlin*, 341 F. Supp. 3d 979, 996 (W.D. Wis. 2018) ("[A]ll individuals, whether transgender or cisgender, have their own understanding of what it means to be a woman or a man, and the degree to which one's physical, sexual characteristics need to align with their identity.").

[5] APA Guidelines at 841-42; Nat'l Ctr. on Parent, Family, & Cmty. Engagement, *Healthy Gender Dev. & Young Children: A Guide for Early Childhood Programs and Prof'ls* 8,

the exact biological bases of gender identity remain under study, researchers and courts recognize that gender identity has a biological basis[6] and that it is a component of sex.[7]

available at https://eclkc.ohs.acf.hhs.gov/sites/default/files/pdf/healthy-gender-development.pdf (last visited Mar. 8, 2020).

[6] *See, e.g.*, Elyse Pine-Twaddle, *Medical Management Updates for Gender Minority Youth and Difficult Cases*, 29 Adolescent Med. State of the Art Revs. 97, 98 (2018) (compiling relevant literature on a biological basis for gender identity); Aruna Saraswat *et al.*, *Evidence Supporting the Biologic Nature of Gender Identity*, 21 Endocrine Practice 199, 199-202 (2015) (surveying data in support of a "fixed, biologic basis for gender identity"); Murat Altinay & Amit Anand, *Neuroimaging Gender Dysphoria: A Novel Psychobiological Model*, Brain Imaging & Behavior, 10 (May 27, 2019), https://doi.org/10.1007/s11682-019-00121-8 (reviewing structural and functional neuroimaging studies as well as the effects of sex hormones on the brain, concluding that evidence suggests a neurobiological basis of gender dysphoria); *Doe v. Mass. Dep't of Corr.*, No. 1:17-cv-12255-RGS, 2018 WL 2994403, at *6 (D. Mass. June 14, 2018) (noting "recent studies demonstrating that [gender dysphoria] diagnoses have a physical etiology, namely hormonal and genetic drivers contributing to the in utero development of dysphoria").

[7] *See, e.g., Schroer v. Billington*¸ 424 F. Supp. 2d 203, 211-13 (D.D.C. 2006) (noting that scientific observation confirms "sex is not a cut-and-dried matter of chromosomes" but rather consists of "different components of biological sexuality") (citation omitted); *In re Heilig*, 816 A.2d 68, 73 (Md. 2003) (explaining that gender is determined by seven factors, including "personal sexual identity"); *Maffei v. Kolaeton Indus., Inc.*, 626 N.Y.S.2d 391, 394 (N.Y. Sup. Ct. 1995) (explaining that "at least seven variables . . . interact to determine the ultimate sex of an individual," including gender identity); *F.V. v. Barron*, 286 F. Supp. 3d 1131, 1136 (D. Idaho 2018) ("There is scientific consensus that biological sex is determined by numerous elements . . . ."). *See also* Julie A. Greenberg & Marybeth Herald, *You Can't Take it With You: Constitutional Consequences of Interstate Gender-Identity Rulings*, 80 Wash. L. Rev. 819, 825-26 (2005) (discussing eight factors that contribute to a person's sex, including gender identity); M. Dru Levasseur, *Gender Identity Defines Sex: Updating the Law to Reflect Modern Medical Science is Key to Transgender Rights*, 39 Vt. L. Rev. 943, 951 & n.36 (2015).

Given the clear medical consensus, courts have long recognized that an individual's gender identity is immutable[8] and that sex is not determined solely by one's genitalia at birth.[9]

It is also largely because of this medical consensus that the federal government and most states, including Minnesota,[10] have adopted policies allowing people to update their sex designation on passports, driver licenses, birth certificates, and other records based on a healthcare provider's attestation of that individual's sex, whether or not the individual has undergone surgery or hormone therapy to change their external, physical sex

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[8] *See, e.g.*, *Bd. of Educ. of Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, 208 F. Supp. 3d 850, 874 (S.D. Ohio 2016) (acknowledging that "transgender people have 'immutable [and] distinguishing characteristics that define them as a discrete group'"); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139-40 (S.D.N.Y. 2015) (same); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017) ("The record before the Court reflects that transgender people as a class . . . exhibit immutable or distinguishing characteristics that define them as a discrete group . . . . [T]heir transgender characteristics are inherent in who they are as people . . . .").

[9] *See, e.g.*, *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No.1 Bd. of Educ.*, 858 F.3d 1034, 1053 (7th Cir. 2017) (acknowledging that a sex marker on a birth certificate "does not take into account an individual's chromosomal makeup, which is . . . a key component of one's biological sex" and in the case of individuals with external genitalia of two sexes or genitalia that is ambiguous in nature, "it is clear that the marker on the birth certificate would not adequately account for or reflect one's biological sex, which would have to be determined by considering more than what was listed on the paper"); and *Schroer v. Billington*, 424 F. Supp. 2d 203, 212-13 (D.D.C. 2006) (recognizing factual complexities that underlie sexual identity that stem from "real variations in how the different components of biological sexuality – chromosomal, gonadal, hormonal, and neurological – interact with each other, and in turn, with social, psychological, and legal conceptions of gender").

[10] Minn. Dep't of Pub. Safety, *Self-Designated Descriptors*, Driver & Vehicle Servs., https://dps.mn.gov/divisions/dvs/Pages/self-designated-descriptors.aspx (last visited Mar. 8, 2020) (listing self-designated descriptors for a driver's license or identification card and specifying that "[a]pplicants are not required under state or federal law to present documentation that confirms the information they submit for these entries.").

characteristics.[11] Indeed, the American Medical Association ("AMA") supports the elimination of all remaining state requirements that a transgender individual undergo surgery in order to amend the individual's birth certificate or provide verification from a medical professional,[12] and WPATH similarly rejects requirements for surgery or other medical treatments in order to obtain accurate identity documents.[13]

According to a 2016 national study, approximately 0.6% of adults in the United States, or 1.4 million people, identify as transgender, and approximately 24,250 adults in Minnesota identify as transgender.[14] In a recent University of Minnesota study, 2.7% of the state's 9th and 11th graders reported themselves as transgender or gender non-

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[11] *See* Transgender Law Ctr., *ID Please!: Quick Guide for Changing Federal Identity Documents to Match Your Gender Identity*, https://transgenderlawcenter.org/wp-content/uploads/2016/11/id-please-quick-guide-to-changing-federal-documents.pdf (last updated Nov. 2016); Nat'l Ctr. for Transgender Equality, *ID Documents Center*, https://transequality.org/documents (last updated Jan. 2020) (providing information about updating name and gender on state and federal IDs and records and providing comparisons of policies of different states); Lambda Legal, *FAQ About Identity Documents*, https://www.lambdalegal.org/know-your-rights/article/trans-identity-document-faq (last visited Mar. 7, 2020); Lambda Legal, *Changing Birth Certificate Sex Designations: State-by-State Guidelines*, https://www.lambdalegal.org/know-your-rights/article/trans-changing-birth-certificate-sex-designations (last updated Sept. 17, 2018).

[12] Am. Med. Ass'n, *Conforming Birth Certificate Policies to Current Medical Standards for Transgender Patients H-65.967*, https://policysearch.ama-assn.org/policyfinder/detail/transgender?uri=%2FAMADoc%2FHOD.xml-0-5096.xml (last modified 2019).

[13] WPATH, *Identity Recognition Statement* (Nov. 15, 2017), *available at* https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf.

[14] Andrew R. Flores et al., *How many adults identify as transgender in the U.S.*?, The Williams Institute, 3 (June 2016), *available at* https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf.

conforming.[15] As recognized by the American Psychiatric Association, being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[16] Rather, being transgender is a natural part of human diversity and transgender people are healthy, contributing members of society.[17]

B. Many transgender people suffer from gender dysphoria, which is addressed through social transition and the provision of medical care.

Transgender individuals may experience gender dysphoria, which is clinically significant distress due to the discordance between their gender identities and their sexes assigned at birth. Gender dysphoria is a serious medical condition recognized in the DSM-5 and by other leading medical and mental health professional groups, including the AMA and the American Psychological Association.

As set forth in the DSM-5, the diagnostic criteria for gender dysphoria in adolescents and adults are:

> A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months duration, as manifested by 2 or more of the following indicators:

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[15] Marla E. Eisenberg et al., *Risk and Protective Factors in the Lives of Transgender/ Gender Nonconforming Adolescents*, 61 J. of Adolescent Health 521, 523 (2017).

[16] Am. Psychiatric Ass'n, Position Statement on Discrimination Against Transgender & Gender Diverse Individuals (2018), *available at* https://www.psychiatry.org/File%20 Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination -Against-Transgender-and-Gender-Diverse-Individuals.pdf.

[17] *See, e.g.*, Substance Abuse & Mental Health Servs. Admin., Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth 11 (Oct. 2015), *available at* https://store.samhsa.gov/system/files/sma15-4928.pdf ("SAMHSA, *Ending Conversion Therapy*") ("[V]ariations in gender identity and gender expression are a part of the normal spectrum of human diversity and do not constitute a mental disorder.").

> 1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or, in young adolescents, the anticipated secondary sex characteristics).
>
> 2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or, in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
>
> 3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
>
> 4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
>
> 5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
>
> 6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).[18]

Gender dysphoria can develop as early as during childhood. As children age, and especially once they reach puberty and begin to undergo the related hormonal changes, the discordance between their gender identities and the sexes ascribed to them at birth can grow increasingly distressing and detrimental to their mental health and wellbeing. If not properly recognized and treated, gender dysphoria may result in psychological distress, anxiety, depression, and even self-harm or suicidal ideation. The longer an individual goes without treatment, the greater the risk of severe harms to the individual's physical and psychological health.

[18] *See* DSM-5; Am. Psychiatric Ass'n, *What is Gender Dysphoria?*, https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria (last visited Mar. 8, 2020).

In past decades, some professionals advocated treatment for gender dysphoria that involved attempts to force an individual's gender identity to conform to the sex assigned to that individual at birth based on physical sex characteristics. Far from relieving the distress caused by gender dysphoria, these methods often resulted in substantial psychological damage, increasing feelings of shame and reinforcing harmful internalized attitudes.[19] It is now understood that the appropriate treatment for gender dysphoria is treatment that affirms the individual's gender identity.[20] The established medical consensus, as embraced by the AMA, the American Academy of Pediatrics, the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry, the American Psychological Association, and the Endocrine Society, among others, is that the only effective treatment for gender dysphoria is to provide medical and social support to transgender individuals to allow them to live in accordance with their core identities.[21]

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[19] Am. Psychoanalytic Ass'n, Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression (2012), *available at* https://apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender

[20] DSM-5; Mohammad Hassan Murad et al., *Hormonal therapy and sex reassignment: a systematic review and meta-analysis of quality of life and psychosocial outcomes*, 72 Clinical Endocrinology 214, 214 (2010) (reporting that 80% of study participants receiving trans-affirmative care experienced improved quality of life, decreased gender dysphoria, and reduced negative psychological symptoms).

[21] *See, e.g.*, Am. Med. Ass'n & GLMA: Health Prof'ls Advancing LGBTQ Equality, *Health insurance coverage for gender-affirming care of transgender* patients (2019), *available at* https://www.endocrine.org/advocacy/position-statements/transgender-health; Am. Med. Ass'n House of Delegates, Resolution 122 (A-08), *Removing Financial Barriers to Care for Transgender Patients*, 1 (2008), *available at* http://www.tgender.net/taw/ama_resolutions.pdf; Jason Rafferty, Am. Acad. of Pediatrics, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 4 Pediatrics 142 (Oct. 2018), *available at* https://pediatrics.aappublications.org/content/142/4/e20182162; Am. Psychiatric Ass'n, Position Statement on Access to Care

Modern treatment of gender dysphoria is generally provided pursuant to the Standards of Care published by WPATH and internationally recognized as the authoritative articulation of professional consensus on the treatment of gender dysphoria.[22] In Minnesota, courts have relied upon WPATH's Standards of Care for 40 years.[23] Treatment

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for Transgender and Gender-Diverse Individuals (2018); Am. Psychiatric Ass'n, Position Statement on Conversion Therapy and LGBTQ Patients (2018); Am. Psychoanalytic Ass'n, Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression (2012); Stewart L. Adelson, Am. Acad. of Child & Adolescent Psychiatry, *Practice Parameter on Gay, Lesbian, or Bisexual Orientation, Gender Nonconformity, and Gender Discordance in Children and Adolescents*, 51 J. Am. Acad. of Child & Adolescent Psychiatry 957 (2012); B.S. Anton, Am. Psychological Ass'n, *Proceedings of the American Psychological Association for the Legislative Year 2008: Minutes of the Annual Meeting of the Council of Representatives*, 64 Am. Psychologist 372 (2009), *available at* https://www.apa.org/about/policy/transgender.pdf; Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clinical Endocrinology & Metabolism 3869 (2017); Endocrine Soc'y, Transgender Health: An Endocrine Society Position Statement (2017), *available at* https://www.endocrine.org/advocacy/position-statements/transgender-health.

[22] *See* Am. Med. Ass'n House of Delegates, Resolution 122 (A-08) *Removing Financial Barriers to Care for Transgender Patients* 1 (2008), *available at* http://www.tgender.net/taw/ama_resolutions.pdf (characterizing WPATH as "the leading international, interdisciplinary professional organization devoted to the understanding and treatment of gender identity disorders" and the WPATH Standards of Care as "internationally accepted" by the medical community); Am. Psychological Ass'n, Report of the APA Task Force Report on Gender Identity and Gender Variance 32 (2009), *available at* http://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf (noting that the Standards of Care reflect "the consensus in expert opinion among professionals in this field on the basis of their collective clinical experience as well as a large body of outcome research"); Rafferty, *supra* note 21, at 6 (acknowledging that "[m]ost protocols for gender-affirming interventions incorporate World Professional Association of Transgender Health and Endocrine Society recommendations" and applying the WPATH Standards of Care to recommendations and conclusions throughout).

[23] *See OutFront Minn. v. Piper*, Court File No. 62-CV-15-7501 ¶ 10 (Minn. Dist. Ct. 2016) (citing *Doe v. State of Minn. Dept. of Public Welfare*, 257 N.W.2d 816, 818-20 (Minn. 1977), *available at* https://scholar.google.com/scholar?hl=en&as_sdt=6%2C39&q=%22outfront+minnesota+v.%22&btnG=).

in accordance with the Standards of Care can include social transition, pharmacological treatment, and surgical treatment. Social transition allows a transgender individual to make life changes that more fully align the with individual's gender identity and gender expression: the individual may opt to wear clothing associated with the individual's gender identity in accordance with general social norms for that gender; use a name of the individual's own choosing and pronouns that are associated with the individual's gender identity; and otherwise act in a manner that comports with the individual's gender identity.[24] Pharmacological treatment may include medications that impact the balance of hormones in the body to better align it with gender identity.[25] Surgical treatment undertaken by a transgender individual may include modification of primary or secondary sex characteristics not in alignment with the individual's gender identity in an effort to alleviate the gender dysphoria caused by the presence or absence of such characteristics.[26] The treatment for each transgender individual will vary according to the individual's particular needs.

The State of Minnesota, and its school districts and other local government agencies, provide for the needs of transgender youth in a variety of ways. For example, the State covers transition-related medical care for participants in Minnesota Medicaid and the

[24] *See* Standards of Care 9-10, 15-16.
[25] *Id.* at 33-36.
[26] *Id.* at 54-55. Surgeries to alter primary sex characteristics are generally not performed in adolescents. *See* Standards of Care 21; WPATH and United States Professional Association for Transgender Health, Joint Statement in Response to Proposed Legislation Denying Evidence-Based Care for Transgender People Under 18 Years of Age (2020), available at https://listloop.com/wpath/mail.cgi/archive/adhoc/20200128125839/.

MinnesotaCare insurance program.[27] In the Twin Cities area, local government agencies maintain a variety of programs. Hennepin Health Care runs a Pediatric Gender and Sexual Health Clinic. Both the Minneapolis Public Schools and the Saint Paul Public Schools maintain offices to ensure a supportive and safe learning environment for LGBTQ students, respectively called Out4Good, and Out for Equity. As a result, both school districts have implemented policies to facilitate equitable access to locker rooms and restrooms for transgender and non-binary students.[28]

C. A supportive school environment is necessary for the healthy development of transgender adolescents and for social transition under the WPATH Standards of Care.

Adolescents spend the majority of their waking hours in school. As they age and the school day lengthens, they typically begin to spend more time with their classmates and teachers than with their parents.[29] School policies and programs designed to create environments that are safe, positive, and supportive of healthy adolescent behaviors lead to better educational outcomes and lifelong health benefits among adolescents.[30]

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[27] Glenn Howatt, *Minnesota Dept. of Human Services adds Medicaid drug coverage for transgender teens*, Star Tribune (Dec. 28, 2019), http://www.startribune.com/dhs-adds-medicaid-drug-coverage-for-transgender-teens/566519802/.

[28] Camille Williams, *Mpls. schools adopt new gender identification policy*, KARE News (Apr. 10, 2018), https://www.kare11.com/article/news/mpls-schools-adopt-new-gender-identification-policy/89-537070158.

[29] Jennifer Johnson, *Transgender Youth in Public Schools: Why Identity Matters in the Classroom*, 40 William Mitchell L. Rev. 63, 90 (2014) (citing Stephanie A. Brill & Rachel Pepper, The Transgender Child: A Handbook for Families and Professionals 153 (2008)).

[30] Stephen Banspach et al., *CDC Grand Rounds: Adolescence – Preparing for Lifelong Health and Wellness*, 65 Morbidity and Mortality Weekly Report 759-62 (2016), *available at* https://www.cdc.gov/mmwr/volumes/65/wr/mm6530a2.htm.

i. Transgender youth bear a heavy burden of discrimination.

It is well established that transgender individuals face social stigma and discrimination. In a survey conducted by the Minnesota Department of Education, 36% of transgender children in Minnesota schools reported being bullied in the preceding month.[31] Nationally, studies have found that 77% of students who identify as transgender or gender non-conforming reported being harassed at some point between kindergarten and grade 12.[32] "Transgender youth experience high rates of violence and harassment in schools and are less likely to attend college than their cisgender peers."[33]

Transgender children who have been subjected to this kind of treatment can suffer tremendously. Research shows that transgender children nationally are at high risk for suicidal thoughts and actions. In 2016, more than half (55.4%) of all Minnesota transgender children surveyed by the Minnesota Department of Education reported that they had attempted suicide within the previous two years.[34] Transgender adolescents have high rates of mental health concerns, including depression, anxiety, and self-harm. These

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[31] Minn. Dep't of Educ., *Results of the 2016 Minnesota Student Survey*, *available at* http://mn.gov/gov-stat/pdf/2017_FACTSHEET_transgender_bullying_statistics.pdf.
[32] Sandy E. James et al., Nat'l Ctr. For Transgender Equality, Report of the 2015 U.S. Transgender Survey, 11 (2016), *available at* https://www.transequality.org/sites/ default/files/ docs/USTS-Full-Report-FINAL.PDF.
[33] Halley P. Crissman et al., *Youth Perspectives Regarding the Regulating of Bathroom Use by Transgender Individuals*, J. of Homosexuality 1 (2019) (citations omitted).
[34] Minn. Dep't of Educ., Results of the 2016 Minnesota Student Survey, *available at* http://mn.gov/gov-stat/pdf/2017_FACTSHEET_transgender_bullying_statistics.pdf (last visited Mar. 8, 2020).

mental health issues are often attributable to the discrimination, stigma, and social rejection they experience and have experienced since childhood.[35]

ii. Integration in a supportive school environment improves transgender adolescent well-being and developmental outcomes.

Because transgender adolescents spend so much time in school, affirmation and support of a transgender adolescent's peers and educators can uniquely enhance an adolescent's sense of self.[36] Specifically, research has shown that supportive communities, peers, and school environments are associated with improved psychosocial outcomes for transgender individuals and other sexual minority youth.[37] Transgender children who are

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[35] Rafferty, *supra* note 21, at 3.

[36] Standards of Care 30-32 (emphasizing that an important part of treatment for gender dysphoria is fostering affirmation and support of the transgender individual and the individual's gender identity by the individual's community); Stephanie L. Budge et al., *Anxiety and Depression in Transgender Individuals: The Roles of Transition Status, Loss, Social Support, and Coping*, 81 J. Consulting & Clinical Psychology 545, 546 (2013) ("[S]ocial support . . . appears to influence transgender individuals' well-being and smoothness of gender transition.") (citation omitted); Jennifer Johnson, *Transgender Youth in Public Schools: Why Identity Matters in the Classroom*, 40 William Mitchell L. Rev. 63, 90 (2014).

[37] SAMHSA, *Ending Conversion Therapy*, *supra* note 17, at 2; Walter O. Bockting, *Stigma, Mental Health, and Resilience in an Online Sample of the U.S. Transgender Population*, 103 Am. J. Public Health 943 (2013) (finding that "peer support significantly moderated the relationship between enacted stigma and psychological distress, thus emerging as a demonstrated factor of resilience in the face of actual experiences of discrimination" and that "[o]nly at high (but not low or medium) levels of peer support was enacted stigma not associated with psychological distress, which suggests that the negative impact of enacted stigma on mental health is pervasive and that regular contact with peers is necessary to ameliorate it"). Improved psychosocial outcomes are seen among such youth when social supports are put in place to recognize and affirm the individuals' gender identities. Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 Pediatrics 1 (2016) ("There is now growing evidence that social support is linked to better mental health outcomes among transgender adolescents and adults.") (citations omitted); Budge, 81 J. Consult Clin. Psychol. at 546 ("Research findings are clear

allowed to socially transition before puberty and enter adolescence with acceptance of their transitions have also been found to have essentially the same levels of depression and only marginally higher rates of anxiety than do their cisgender siblings and other children their age.[38]

Indeed, because social transition entails assuming gender expression and role consistent with one's gender identity,[39] a school environment that permits transgender students to integrate most seamlessly will also provide the most conducive atmosphere for alleviation of gender dysphoria and healthy student development.[40] Notably, this extends to access to regular sex-segregated facilities: Researchers have postulated that transgender students' increased feeling of safety in bathrooms and locker rooms and resulting increased self-esteem would help transgender students achieve higher grades.[41] These supports are especially important for students who do not have a supportive home or family life.

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in regards to social support – the more social support an individual experiences the less distress will be evident.").

[38] Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 Pediatrics 1 (2016).

[39] *See* Standards of Care 9.

[40] *See* Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 Developmental Psychology 1580, 1586 (2010) ("Enactment of school policies that specifically prohibit victimization due to LGBT status, gender nonconformity, and other types of bias-related harassment can help reduce negative psychosocial outcomes in LGBT and gender-nonconforming young people.").

[41] Laura J. Wernick et al., 46 *Gender Identity Disparities in Bathroom Safety and Wellbeing among High School Students*, J. Youth Adolescence 917-30 (2017).

iii. Segregation within schools, such as that established by Appellant's policy, worsens transgender adolescent well-being and developmental outcomes.

Conversely, schools that single out transgender students for differential treatment from other students of the same gender, or that segregate transgender students from cisgender students for use of sex-segregated school facilities, worsen educational and developmental outcomes for transgender students.

According to major medical and mental health organizations, including the AMA, the American Academy of Pediatrics, the American Psychiatric Association, the American Psychological Association, and the National Association of School Psychologists, forbidding transgender students equal access to bathrooms and changing facilities consistent with their gender identities is harmful to their health and well-being and can cause acute psychological damage, increasing the risk of depression, anxiety, trauma, and isolation that accompanies gender dysphoria.[42] In a 2017 report regarding Minnesota

[42] *See* Tanya Albert Henry et al., Am. Med. Ass'n, *Exclusionary bathroom policies harm transgender students* (Apr. 17, 2019), https://www.ama-assn.org/delivering-care/population-care/exclusionary-bathroom-policies-harm-transgender-students; Am. Acad. of Pediatrics, *Human Rights Campaign Letter* (May 25, 2016), https://www.aap.org/en-us/advocacy-and-policy/state-advocacy/Documents/AAP_HRCLetter.pdf (signed onto by, *inter alia*, the American Academy of Pediatrics, American Association of Child and Adolescent Psychiatry, American Counseling Association, Child Welfare League of America, National Association of School Psychologists, National Association of Secondary School Principals, National Association of Social Workers); Brief of Amici Curiae American Academy of Pediatrics, American Psychiatric Association, American College of Physicians, and 17 Additional Medical and Mental Health Organizations in Support of Respondent, *Gloucester Cty. Sch. Bd. v. G.C.*, No. 16-273 (U.S. filed Mar. 2, 2017), *available at* https://www.scotusblog.com/wp-content/uploads/2017/03/16-273_bsac_american_academy_of_pediatrics.pdf; Am. Psychological Ass'n & Nat'l Ass'n of School Psychologists, *Resolution on Gender and Sexual Orientation Diversity in Children and*

transgender youths' access to bathrooms, students interviewed reported that restricted bathroom access in the form of inconveniently located bathrooms or segregated bathrooms negatively impacted their education and social experiences by creating challenges to self-esteem and exposing them to social pressures from peers and administrators to conform to their sex assigned at birth.[43] Students who were prohibited from using restrooms consistent with their gender identities reported trying to avoid drinking or eating so they did not have to use the bathroom.

These findings are borne out on a national scale as well. In a 2013 survey in Washington, D.C., 68% of transgender respondents reported experiencing verbal harassment with 9% reporting physical assault in single-gender restrooms.[44] 10% of students surveyed indicated that denial of equitable restroom access, including through segregationist policies or through violence and harassment, harmed their educational advancement by causing excessive absenteeism or dropout.[45] Forbidding transgender individuals from accessing bathrooms and changing areas in the same manner as the general population has been shown to increase suicidal thoughts and actions.[46] As a result,

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Adolescents in Schools (2014), *available at* https://www.apa.org/about/policy/orientation-diversity; Mark A. Schuster, *Beyond Bathrooms – Meeting the Health Needs of Transgender People*, 375 New England J. Med. 101, 101-02 (2016).

[43] Conner Suddick and M. Sheridan Embser-Herbert, *"I Just Want to Pee": Minnesota Schools' Restroom Policies and the Impact on Transgender Students*, Diversity Initiatives Research Project, Hamline University (August 2017).

[44] Jody L. Herman*, Gendered Restrooms and Minority Stress: The Public Regulations of Gender and its Impact on Transgender People*'s *Lives*, 19 J. Pub. Mgmt. & Soc. Pol'y 65, 71, 73-74 (2013).

[45] *Id*. at 74.

[46] *See* Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J. Homosexuality 1378, 1388-89 (2016), *available*

the National Association of School Psychologists, the National Association of Secondary School Principals, the National Association of Elementary Principals, and the American School Counselor Association have all called upon schools to allow transgender students to use bathrooms and changing facilities consistent with their gender identities and shared by cisgender peers.[47]

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at https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1065&context=ssw_facpub (showing an increased risk of suicidality for transgender college students denied use of the same facilities used by other students). Likewise, such harmful impacts have been recognized by the Courts of this country. *See, e.g., Doe ex rel. Doe v. Boyertown Area Sch. Dist.,* 897 F.3d 518, 523 (3d Cir. 2018), *cert. denied*, 139 S. Ct. 2636 (2019) ("Policies that exclude transgender individuals from privacy facilities that are consistent with their gender identities 'have detrimental effects on the physical and mental health, safety, and well-being of transgender individuals.' These exclusionary policies exacerbate the risk of 'anxiety and depression, low self-esteem, engaging in self-injurious behaviors, suicide, substance use, homelessness, and eating disorders among other adverse outcomes.' The risk of succumbing to these conditions is already very high in individuals who are transgender. In a survey of 27,000 transgender individuals, 40% reported a suicide attempt (a rate nine times higher than the general population). Yet, when transgender students are addressed with gender appropriate pronouns and permitted to use facilities that conform to their gender identities, those students 'reflect the same, healthy psychological profile as their peers.'") (citations and footnotes omitted); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ*., 858 F.3d 1034, 1045-46 (7th Cir. 2017) ("[T]he School District's argument that [the student's] harm was self-inflicted because he chose not to use the gender-neutral restrooms, fails to comprehend the harm that [the student] has identified. The School District actually exacerbated the harm, when it dismissed him to a separate bathroom where he was the only student who had access. This action further stigmatized [the student], indicating that he was 'different' because he was a transgender boy. . . Additionally, [the student] alleged that using the single-user restrooms actually invited more scrutiny and attention from his peers, who inquired why he had access to these restrooms and asked intrusive questions about his transition. This further intensified his depression and anxiety surrounding the School District's policy.").

[47] *See* Nat'l Ass'n of Elementary Sch. Principals, *New Resource on Supporting Transgender Students* (May 2016), https://www.naesp.org/communicator-may-2016/new-resource-supporting-transgender-students (endorsing and supporting the "Transgender Students and School Bathrooms: Frequently Asked Questions" publication by Gender Spectrum, https://www.genderspectrum.org/bathroomfaq, and noting the similar endorsement and support by the American School Counselors' Association, the

Moreover, such policies are understood by cisgender and transgender students alike as tacitly condoning discrimination against and stigmatization of transgender students. Thus, where schools single out transgender students for the imposition of specific limitations regarding access to restrooms and changing rooms, transgender students' reported rates of sexual assault nearly doubles.[48] Singling out transgender youth with restrictive policies regarding the use of restrooms and changing rooms also necessarily points them out as transgender and creates environments in which transgender youth feel and are less safe both in those rooms and in school premises generally.[49]

D. Appellant's policy of Segregation Has Had Predictably Harmful Results.

In the present case, Coon Rapids High School permitted N.H. equal access to the boys' changing room for months. Complaint at ¶¶ 2-4, 73. This practice functioned effectively for N.H., the boys' swim team, and the school; it did not cause any problems and no complaints were made. *Id.* at ¶ 74. Nevertheless, Appellant Anoka-Hennepin

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National Association of Secondary School Principals, and the National Association of School Psychologists); Nat'l Ass'n of Sch. Psychologists, *Gender Inclusive Schools: Policy, Law, and Practice*, https://www.nasponline.org/resources-and-publications/resources-and-podcasts/diversity/lgbtq-youth/gender-inclusive-schools-faqs/gender-inclusive-schools-policy-law-and-practice (last visited Mar. 8, 2020); Nat'l Ass'n of Secondary Sch. Principals, NAASP Position Statements: Transgender Students, *available at* https://www.nassp.org/policy-advocacy-center/nassp-position-statements/transgender-students (last visited Mar. 8, 2020); Am. Sch. Counselor Ass'n, *The School Counselor and Transgender/Gender-nonconforming Youth* (2016), https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS_Transgender.pdf.

[48] Gabriel R. Murchison et al., *School Restroom and Locker Room Restrictions and Sexual Assault Risk Among Transgender Youth*, 143 Pediatrics 1, 5 (2019).

[49] *See id.* at 6-7; Lance S. Weinhardt et al., *Transgender and Gender Nonconforming Youths' Public Facilities Use and Psychological Well-Being: A Mixed Method Study*, 2.1 Transgender Health 140, 149 (2017).

School District 11 intervened to impose a new policy, creating a special "enhanced privacy" changing room in which to segregate appellee N.H. from other boys in the boys' changing room. *Id.* at ¶ 88. This policy created a problem where none had existed, broke with well-settled understandings of transgender students' need for support (*see supra* 12-14) and sought to segregate N.H. from the other boys despite the potential risks to him of enacting a policy of segregation (*see supra* 14-17). Such a policy could be predicted to cause a transgender adolescent severe harm. This is exactly what happened here: N.H.'s hospitalizations coincided precisely with Appellant's actions to impose its policy and, ultimately, N.H. was forced to withdraw from Coon Rapids High School. Complaint at ¶¶ 4, 6, 79-85, 105-06. Appellant's policy of segregation is also in marked contrast to efforts by other local school districts, health agencies, and the State itself, to foster integration. *See supra* 10-11.

For all the above reasons, segregation of transgender students, such as Appellant's policy, has long been understood as harmful to students, and therefore also unlawful. Nearly a decade ago, the Fountain-Fort Carson School District in Colorado sought to segregate one of its students, a transgender girl, requiring her to use a special single-user, gender-neutral restroom rather than the girls' restroom used by other girls. The Colorado Division of Human Rights concluded that:

> [S]eparate is very rarely, if ever equal. School is not merely an institution for educating children through books and structured classes. . . . Children also learn social skills, such as respect, communication, trust, how to appropriately interact with people from different backgrounds, and how to become part of a community. Thus a very important component of school is being accepted by one's peers. . . . Relegating [a transgender student] to a set of restrooms which no other student is likely to use, even if permitted to do

> so . . . overtly demonstrate[s] her separateness from the other students . . . [and] creates an environment rife with harassment and inapposite to a nurturing school atmosphere. This deprives the [student] of the acceptance that all students require to excel in their learning environment [and] creates a barrier where none should exist.

Coy Mathis v. Fountain-Fort Carson School District 8, Charge No. P20130034X, at 13 (CO Div. of Civ. Rights June 17, 2013), *available at* https://archive.org/details/716966-pdf-of-coy-mathis-ruling/mode/2up.

CONCLUSION

For the foregoing reasons, amici curiae WPATH, JustUs Health and Family Tree respectfully urge this Court to affirm the decision and order below.

[*Signature page follows*]

Dated: March 9, 2020

COZEN O'CONNOR

/s/ Amanda L. Nelson

Amanda L. Nelson
(admitted *pro hac vice*)
Marla S. Benedek
45 Broadway, 16th Floor
New York, New York 10006
Telephone: (212) 453-3950
Email: anelson@cozen.com
mbenedek@cozen.com

/s/ Cassandra Jacobsen

Cassandra Jacobsen (#0400120)
33 South 6th Street, Suite 3800
Minneapolis, MN 55402
Telephone: (612) 260-9079
E-mail: cjacobsen@cozen.com

- and -

TRANSGENDER LEGAL DEFENSE
& EDUCATION FUND, INC.
David P. Brown
520 8th Avenue, Suite 2204
New York, New York 10018
Telephone: (646) 862-9396
Email: dbrown@transgenderlegal.org

Attorneys for Amici Curiae WPATH, Family Tree and JustUs Health

CERTIFICATION

The undersigned certifies that this Brief complies with the typeface requirements of Minn. R. Civ. P. 132.01 subd. 3; it was prepared in 13-point proportionally spaced typeface, using Microsoft Word 2016 software, and contains 6,232 words, excluding the Table of Contents and Table of Authorities, based on a word count by Microsoft Word 2016 software.

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COZEN O'CONNOR

/s/ Amanda L. Nelson

Amanda L. Nelson
45 Broadway, 16th Floor
New York, New York 10006
Telephone: (212) 453-3950
Email: anelson@cozen.com

/s/ Cassandra Jacobsen

Cassandra Jacobsen (#0400120)
33 South 6th Street, Suite 3800
Minneapolis, MN 55402
Telephone: (612) 260-9079
E-mail: cjacobsen@cozen.com